CLERK'S COPY.

14,3

Nam

152033
Ja

# TRANSCRIPT OF RECORD

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 172

THE UNITED STATES, PETITIONER

vs.

THE SEMINOLE NATION

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

**PETITION FOR CERTIORARI FILED JULY 8, 1936**
**CERTIORARI GRANTED OCTOBER 12, 1936**

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1936

---

## No. 172

## THE UNITED STATES, PETITIONER

vs.

## THE SEMINOLE NATION

---

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

---

INDEX


| | Original | Print |
|---|---|---|
| Record from Court of Claims | 1 | 1 |
| Original petition | 1 | 1 |
| General traverse | 6 | 3 |
| History of proceedings | 7 | 3 |
| Amended petition | 7 | 3 |
| Notation of no answer having been filed | 18 | 8 |
| Substitution of attorney | 18 | 8 |
| Submission of case | 18 | 8 |
| Special findings of fact | 19 | 9 |
| Conclusion of law | 25 | 16 |
| Opinion of the court, Williams, J | 25 | 16 |
| Judgment | 38 | 29 |
| Further substitution of attorney | 38 | 29 |
| Proceedings after entry of judgment | 38 | 29 |
| Argument of second motion for new trial | 39 | 29 |
| Order overruling second motion for new trial | 39 | 30 |
| Defendant's motion for designation of record in re certiorari | 40 | 30 |
| Order allowing motion for designation of record | 41 | 31 |
| Excerpts from report of General Accounting Office referred to in Finding XII | 42 | 31 |
| Clerk's certificate [omitted in printing] | 54 | 34 |
| Order allowing certiorari | | 35 |


80898—36——1

1 In United States Court of Claims

No. L–51

THE SEMINOLE NATION, PLAINTIFF

*vs.*

THE UNITED STATES, DEFENDANT

## *Petition*

Filed February 24, 1930

*To the honorable the Court of Claims:*

The petitioner, the Seminole Nation, respectfully represents:

I

That by a certain Act of Congress, approved May 20th, 1924 (Pub. 124, 65 Congress, as modified by Joint Resolution, 44 Stat. 568, giving permission to file separate petitions), petitioner was authorized and empowered to bring this action.

II

2 That at all times mentioned herein, and for many years prior thereto, the Seminole Nation was the owner of large trust funds, held in trust by the defendant for its use and benefit, and that there existed various treaties and agreements between said plaintiff and defendant whereby said trust funds were to be managed and invested by defendant, and the interest thereon paid over to the National Treasurer of plaintiff.

III

That from and after the passage of a certain Act of Congress, approved June 28th, 1898 (30 Stat. 495), defendant impounded all of the funds of plaintiff, refused to further pay them over to plaintiff's National Treasurer, and proceeded to disburse them for various purposes as shall hereinafter appear.

IV

That the only authority given by said Act for the disbursement of plaintiff's funds is Section 19 thereof, which said section is as follows, to-wit:

"Sec. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but

payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."

3 V

That after the passage of said last named Act, Congress passed various acts giving authority for the expenditure of plaintiff's funds, but plaintiff avers that no subsequent act gave authority for the expenditure of the funds hereinafter mentioned.

VI

That from July 1st, 1898, until the present time, defendant, in violation of its duty as trustee of the funds of plaintiff, in violation of the rights of plaintiff under its various treaties and agreements with defendant, and without authority of Congress, has spent large sums of the trust funds of plaintiff.

VII

That at all times mentioned herein a certain Act of Congress, now known as Sec. 2097, Revised Statutes of the United States, was in full force and effect. That said section is as follows, to-wit:

"No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law."

4 VIII

That the defendant has thus spent, in violation of law, a large amount of the trust funds of plaintiff. That the exact amount of such expenditure will be shown by the books and records of defendant, and that such knowledge is in the possession of defendant, and not of plaintiff.

Wherefore, plaintiff prays that defendant be required to file in this cause a statement showing its expenditures of plaintiff's funds during said period, the purposes for and dates when such expenditures were made, and the authority of law, if any, which authorized defendant to make such expenditures; that, if necessary thereafter, plaintiff be permitted to amend this petition, and that plaintiff have judgment against the defendant in such sum or sums as appear to this court to be expended without authority of law, with interest

at six per centum per annum from the date of the expenditure of the several items constituting said sum.

THE SEMINOLE NATION,
By E. J. VAN COURT,
*Its Attorney of Record.*

Counsel:
J. B. CAMPBELL,
PAUL M. NIEBELL,
E. L. EWING.

5 [*Duly sworn to by E. J. Van Court, jurat omitted in printing.*]

6 II. *General traverse*

Filed April 5, 1930

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

CHARLES B. RUGG,
*Assistant Attorney General.*

7 III. *History of proceedings*

On September 4, 1934, the plaintiff filed a motion for leave to file an amended petition.

On September 19, 1934, the court allowed said motion, and the amended petition was filed on the same day, which is as follows:

IV. *Amended petition*

Filed September 19, 1934

*To the honorable the Court of Claims:*

The plaintiff, the Seminole Nation, respectfully represents:

I

That by a certain act of Congress, approved May 20th, 1924 (43 Stat. 133, as modified by Joint Resolution approved May 19, 1926, 44 Stat. 568, giving permission to file separate petitions, and Joint Resolution of February 19, 1929, 45 Stat. 1229, extending the
8 time for filing suits until June 30, 1930), plaintiff was authorized and empowered to bring this action.

II

That at all times mentioned herein, and for many years prior thereto, the Seminole Nation was the owner of large trust funds, which represented the consideration given by the United States for

the cession of certain of its lands, which said trust funds were held in trust by the defendant for the use and benefit of plaintiff; and that there existed various treaties and agreements between said plaintiff and defendant and certain acts of Congress whereby said trust funds were to be managed and invested by defendant for the benefit of plaintiff, which said treaties, agreements, and statutes are hereinafter more specifically referred to.

III

That the Seminole Treaty of August 7th, 1856 (11 Stat. 699), provided in part as follows:

"Article 8. In consideration of such release, discharge, and obligation, * * * the United States do therefore agree and stipulate as follows, viz: To pay to the Seminoles now in the west, * * * to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith-shops among them, said sums to be ap-
9 plied to these objects in such manner as the President shall direct."

"Article 9. The United States agree to * * * expend for them in improvements, after they shall all remove, the sum of twenty thousand dollars."

That under said Articles 8 and 9, the total obligation of the United States to the Seminole Nation was $92,000.00. That notwithstanding said definite treaty obligation the defendant, in violation thereof, failed and neglected to disburse all of said $92,000.00 for the benefit of plaintiff in accordance with the terms of said treaty, and therefore the defendant is now liable to plaintiff for the balance due thereunder in the amount of, to-wit, $63,353.42.

IV

That Article 8 of said Treaty of August 7th, 1856, 11 Stat. 699, provided further in part as follows:

"* * * the United States do therefore agree and stipulate as follows, viz: * * * Also to invest for them the sum of two hundred and fifty thousand dollars, at five per cent per annum, the interest to be regularly paid over to them per capita as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west, whereupon the two sums so invested shall constitute a
10 fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them per capita as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable,

shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse laws."

That notwithstanding the plain obligation of the United States to pay interest on said funds at the rate of five per centum per annum under the terms of said treaty, the defendant, in violation thereof, failed and neglected to pay said interest in accordance with the terms of said treaty, and therefore the defendant is now liable to plaintiff for the amount of said unpaid interest, amounting to $304,551.28.

V

That Article 3 of the Seminole Treaty of March 21st, 1866, 14 Stat. 755, provides in part as follows:

"* * * The balance due the Seminole Nation after making said deduction, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to-wit: * * * seventy thousand dollars to remain in the United States Treasury, upon which the United States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be
11 paid annually and appropriated to the support of schools: * * *"

That although said treaty provision continued in full force and effect until the close of the fiscal year 1909 (see the Act of March 3, 1909, 35 Stat. 781, capitalizing said $50,000.00 fund), yet the defendant in violation of its said obligation, failed and neglected to pay the interest of $2,500.00 annually for the support of schools in accordance with the terms of said treaty, and therefore the defendant is now liable to plaintiff for the balance due thereunder in the amount of, to-wit, $90,597.20.

VI

That said Article 3 of said Treaty of March 21, 1866, 14 Stat. 755, further provided in part as follows:

"Fifteen thousand dollars shall be paid for the erection of a mill suitable to accommodate said nation of Indians:"

That notwithstanding said plain obligation the defendant failed and neglected to erect the said mill in accordance with its obligation under said Article 3, and therefore the defendant is now liable to the plaintiff in the amount of $15,000.00.

VII

That Article 6 of the Treaty of March 21, 1866, 14 Stat. 755, provided as follows:

12 "Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not ex-

ceeding ten thousand ($10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the superintendent of Indian Affairs, in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands upon which said agency buildings shall be directed (erected), which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated."

That although said amount of $10,000 was twice appropriated by Congress for the fulfillment of said Article 6, yet the defendant failed and neglected to erect said agency buildings in accordance with the terms of said treaty, and, therefore, the defendant is now liable to plaintiff for the said amount of $10,000.00 under said treaty obligation.

VIII

That from and after the passage of a certain act of Congress, approved June 28th, 1898, 30 Stat. 495, defendant impounded all the funds of plaintiff, and assumed full administrative control over the disbursement of same.

13 That Section 19 of said Act of June 28th, 1898, provided as follows:

"Sec. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."

That notwithstanding the plain inhibition in said Section 19 that no payments thereafter should be made to "the tribal governments or to any officer thereof for disbursement", yet in violation of said section the defendant illegally disbursed the amounts hereinafter set forth, derived from the following sources:

| | |
|---|---|
| Treaty of August 7, 1856, Funds | $212,500.00 |
| Treaty of March 21, 1866, Funds | 29,750.00 |
| Act of March 2nd, 1899, Funds | 622,156.87 |
| Indian Moneys, Proceeds of Labor Fund | 295.71 |
| Total | 864,702.58 |

Therefore, the defendant is liable to the plaintiff in the amount of $864,702.58 for the violation of said Section 19 of said Act of June 28th, 1898.

14 IX

That the Original Seminole Agreement, dated December 16, 1897, and ratified by Act of July 1, 1898, 30 Stat. 567, provided in part as follows:

"Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five per cent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government, applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country."

That said "Seminole School Fund" was established on March 6, 1906 (G. A. O. Report, pp. 275; 344). That notwithstanding the plain provisions of the above-quoted Seminole Agreement that said school fund was to be a permanent fund for the education of the children of the members of said tribe, the defendant in violation thereof, and without authority of law, disbursed from the principal thereof the amount of $154,455.30. Therefore, the amount of $154,-455.30 is due the Seminole Nation from the defendant for the said violation of the above-quoted provisions of said Seminole Agreement.

## X

That Section 18 of the Act of August 24, 1912, 37 Stat. 518, provides in part as follows:

"Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress * * *"

That similar provisions to the one above quoted were carried in all subsequent Indian Appropriation Acts, and said provision was made a permanent provision of law by the Act of May 24, 1922, 42 Stat. 575. That under the provisions of said above-quoted law no tribal money of the Seminole Nation could be disbursed without a specific appropriation by Congress. That notwithstanding this plain provision of law, the defendant, in violation thereof, from the fiscal year 1913 to date, disbursed the amounts hereinafter set forth for the following purposes without specific appropriation by Congress:

| | | | |
|---|---|---|---|
| Cash Payments in Lieu of Allotments | Fis. Yr. | 1918 | $120.00 |
| Expenses of Making Per Capita Payments | " " | 1914–1920 | 4,981.25 |
| Education | " " | 1913–1930 | 55,370.04 |
| Insurance | " " | 1915–1925 | 1,386.20 |
| Construction and Repair of Buildings | " " | 1913–1916 | 4,389.88 |
| Total | | | $66,247.37 |

Therefore, the defendant is liable to the plaintiff in the total amount of $66,247.37 for the violation of the above-quoted provision of law.

XI

Plaintiff further shows unto the court that the audit of the books of defendant, as contained in the report of the General Accounting Office filed herein, admits errors of bookkeeping in defendant's handling of the trust funds of plaintiff, resulting in a net loss to plaintiff of a total sum of, to-wit, $178,533.42, the details of which will be set forth hereafter in plaintiff's request for findings of fact.

XII

Wherefore, plaintiff prays that judgment be entered against defendant for the total amounts of said illegal disbursements and said erroneous bookkeeping entries, together with interest on same at five per cent on all illegal disbursements and erroneous bookkeeping entries from Seminole Trust Funds, which by law draw said rate
17 of interest, and interest at the rate of four per cent on all other of said illegal disbursements and erroneous bookkeeping entries in accordance with the provisions of the Act of February 12, 1929, 45 Stat. 1164.

THE SEMINOLE NATION,
By E. J. VAN COURT,
*Its Attorney of Record.*

Of Counsel:
J. B. CAMPBELL,
W. W. PRYOR,
P. M. NIEBELL.

[*Duly sworn to by E. J. Van Court, jurat omitted in printing.*]

18 V. *Notation of no answer having been filed*

No demurrer, plea, answer, or other defense in the premises, having been filed by the defendant, a notation to that effect was entered on the docket in the case, as provided by Rule 15 (a).

VI. *Substitution of attorney of record*

The petitions in this case were filed by Mr. E. J. Van Court, as attorney of record.

On May 31, 1935, a motion was filed by Mr. John B. Campbell, suggesting death of the attorney of record, and for his substitution as attorney of record. On June 1, 1935, said motion was allowed by the court and Mr. Campbell entered as attorney of record.

VII. *Submission of case*

On June 4, 1935, the case was submitted on merits without argument.

19 VIII. *Special findings of fact, conclusion of law and opinion of the court by Williams, J., filed December 2, 1935.*

Mr. E. J. Van Court for the plaintiff. Messrs. J. B. Campbell, W. W. Pryor, and P. M. Niebell were on the brief.

Mr. Assistant Attorney General Harry W. Blair for the defendant. Messsrs. George T. Stormont and Charles H. Small were on the brief.

This case having been heard by the Court of Claims, the court, upon the evidence adduced, makes the following

*Special findings of fact*

I

By an act of Congress approved May 20, 1924 (43 Stat. 133), it is provided:

"That jurisdiction be, and is hereby, conferred upon the Court of Claims, notwithstanding the lapse of time or statutes of limitation, to hear, examine, and adjudicate and render judgment in any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Seminole Indian Nation or Tribe, or arising under or growing out of any act of Congress in relation to Indian Affairs, which said Seminole Nation or Tribe may have against the United States, which claims have not heretofore been determined and adjudicated on their merits by the Court of Claims or the Supreme Court of the United States.

"SEC. 2. Any and all claims against the United States within the purview of this act shall be forever barred unless suit be instituted or petition filed as herein provided in the Court of Claims within five years from the date of approval of this act, and such suit shall make the Seminole Nation party plaintiff and the United States party defendant. The petition shall be verified by the attorney or attorneys employed to prosecute such claim or claims under contract with the Seminoles approved by the Commissioner of Indian Affairs and the Secretary of the Interior; and said contract shall be executed in their behalf by a committee chosen by them under the direction and approval of the Commissioner of Indian Affairs and the Secretary of the Interior. Official letters, papers, documents, and records, or certified copies thereof, may be used in evidence, and the departments of the Government shall give access to the attorney or attorneys of said Indian nation to such treaties, papers, correspondence, or records as may be needed by the attorney or attorneys of said Indian nation.

"SEC. 3. In said suit the court shall also hear, examine, consider, and adjudicate any claims which the United States may have against said Indian nation, but any payment which may have been
20 made by the United States upon any claim against the United

States shall not operate as an estoppel, but may be pleaded as an offset in such suit.

"SEC. 4. That from the decision of the Court of Claims in any suit prosecuted under the authority of this act, an appeal may be taken by either party as in other cases to the Supreme Court of the United States.

"SEC. 5. That upon the final determination of any suit instituted under this act, the Court of Claims shall decree such amount or amounts as it may find reasonable to be paid the attorney or attorneys so employed by said Indian nation for the services and expenses of said attorneys rendered or incurred prior or subsequent to the date of approval of this act: Provided, That in no case shall the aggregate amounts decreed by said Court of Claims for fees be in excess of the amount or amounts stipulated in the contract of employment, or in excess of a sum equal to 10 per centum of the amount of recovery against the United States.

"SEC. 6. The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

"SEC. 7. A copy of the petition shall, in such case, be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in such case."

This act was modified by joint resolution of May 19, 1926 (44 Stat. 568), permitting plaintiff to bring separate suits on one or more causes of action, and by the act of Congress approved February 19, 1929 (45 Stat. 1229), the time for filing such suits was extended to June 30, 1930.

II

Under the provisions of said act of May 20, 1924, the original petition herein was filed on February 24, 1930, and an amended petition was filed on September 19, 1934.

III

Under the terms of article VIII of the treaty of August 7, 1856 (11 Stat. 699, 702), between the United States and the Creek and Seminole Tribes of Indians, the United States agreed in respect of the Seminoles, among other things:

"* * * to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them",

said sums to be applied to said objects in such manner as the President should direct.

Under the provisions of said article VIII the United States further agreed, in respect of the Seminoles:

"* * * to invest for them the sum of two hundred fifty thousand dollars, at five percent per annum, the interest to be regularly paid over to them per capita as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have
21 emigrated and joined their brethren in the west, whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them per capita as an annuity; * * *"

Under the provisions of article IX of said treaty of August 7, 1856, the United States agreed to expend for the Seminoles then in Florida, after they had all removed to the Seminole country west, the sum of twenty thousand dollars in improvements.

IV

For each fiscal year during the ten-year period from 1858 to 1867, inclusive, Congress annually appropriated as provided by article VIII of the said treaty, the following amounts: $3,000 for support of schools; $2,000 for agricultural assistance; and $2,200 for the support of smiths and smith shops, or a total of $72,000, the amount due the Seminoles under these provisions of the treaty.

While the said amounts were duly appropriated by Congress and made available for the purposes named, only $10,436.58 of the amounts so appropriated was disbursed in payment of the above treaty obligations.

V

Payments of $25,000 per annum, interest on the $500,000 fund provided for in article VIII of the treaty of 1856, were begun in the year 1859. For the fiscal years 1861 to 1866, inclusive, Congress annually appropriated this sum for the purpose of making per capita payments to members of the Seminole Nation.

The said appropriations aggregating $150,000 were not disbursed as per capita payments to members of the Seminole Nation, but were diverted from such purposes and expended for the benefit of refugee Seminoles and refugee members of other tribes during the period of the Civil War.

VI

Commencing with the act of July 26, 1866 (14 Stat. 263, 264), up to and including the act of April 30, 1908 (35 Stat. 91), Congress annually appropriated $25,000, interest on the $500,000 fund provided in article VIII of the treaty of 1856 for the purpose of making per capita payments to members of the Seminole Nation.

The United States disbursed the sums thus appropriated for the years involved, either by making direct payment per capita to members of the tribe, or by cash payment to the treasurer of the Seminole Nation, except for the fiscal years following, in which the amounts stated were neither disbursed to members of the tribe nor paid to the Seminole national treasurer:

| Year | Amount | Rep. G. A. O. page | Year | Amount | Rep. G. A. O. page |
|---|---|---|---|---|---|
| 1867 | $12,500.00 | 151 | 1874 | $11,101.58 | 153 |
| 1868 | 450.00 | 151 | 1876 | 24,500.00 | 154 |
| 1869 | .25 | 151 | 1879 | 454.00 | 155 |
| 1870 | 5,321.00 | 152 | 1907 | 12,500.00 | 164 |
| 1871 | 12,500.00 | 152 | 1908 | 25,000.00 | 164 |
| 1872 | 12,625.45 | 152 | 1909 | 25,000.00 | 164 |
| 1873 | 12,599.00 | 153 | | | |

22

## VII

In March 1857 Congress, in fulfillment of the stipulation in article IX of the treaty, appropriated $20,000 to be expended for improvements for the Seminoles in Florida after they had removed to the Seminole country west.

The Florida Seminoles having been removed to the country west, there was disbursed for their benefit from this appropriatioi in payment for improvements the sum of $18,210.00. Report G. A. O., pages 143–145.

## VIII

Article III of the treaty between the Seminole Nation and the United States of March 21, 1866 (14 Stat. 755), provides:

"* * * The balance due the Seminole Nation after making said deduction, amounting to one hundred thousand dollars, the United States agree to pay in the following manner, to wit: * * * seventy thousand dollars to remain in the United States Treasury, upon which the United States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; * * *"

Article III of the treaty of March 21, 1866, contained the further provision:

"Fifteen thousand dollars shall be paid for the erection of a mill suitable to accommodate said nation of Indians."

Article VI of the said treaty of 1866 provides as follows:

"Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand (10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of

the Superintendent of Indian Affairs; in consideration whereof, the Seminole Nation hereby relinquish and cede forever to the United States one section of their lands, upon which said agency buildings shall be directed [erected], which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated."

IX

Congress, for the fiscal year 1867 and each year thereafter to and including the fiscal year 1909, appropriated the sum of $2,500 for school purposes, interest on the $50,000 set aside as a permanent school fund in article III of the treaty of 1866.

For the fiscal years 1867 to 1874, inclusive, for which period $20,000 was appropriated in fulfillment of this provision of article III of the treaty, only $16,902.80 was disbursed by the defendant for the purposes of education.

Beginning with the fiscal year 1875 and each year thereafter, to and including the fiscal year 1907, the $2,500 annually appropriated by Congress under this article of the treaty, together with $1,000 interest on the $20,000 fund provided in the said article III as a fund for the maintenance of the Seminole Nation, was paid by the Secretary of the Interior direct to the Seminole tribal treasurer, except that for the year 1907 only $1,750 was so paid.

23

X

The act of July 28, 1866 (14 Stat. 319), appropriated the sum of $15,000 for the erection of a mill, as was provided in article III of the treaty of 1866.

The $15,000 so appropriated was placed in the hands of George A. Reynolds, United States Indian agent, for the purpose of purchasing and installing a suitable mill. He purchased a saw and grist mill at Fort Smith, Arkansas, and had the same transported to and erected at the Seminole Agency. The cost to the defendant of the purchase, repair, removal, and erection of the mill was $16,300. Although the testimony as to the suitability of the mill for the purposes intended is conflicting, the Seminoles vigorously protesting that it was not suitable, its erection substantially met the requirements of article III of the treaty.

XI

Congress by the act of July 28, 1866 (14 Stat. 319), appropriated the sum of $10,000 for agency buildings, pursuant to article VI of the treaty of 1866. None of this amount was used and it was subsequently returned to surplus. However, another appropriation of $10,000 to replace the amount so returned to surplus was carried in the act of May 18, 1872, 17 Stat. 132. On July 31, 1875, the sum of

$969.85 out of this appropriation was returned to surplus. It does not appear for what purpose the $9,030.15 expended out of this appropriation was used, but it was not used for the purpose of erecting agency buildings.

In the years 1870 and 1872 there was expended for "agency buildings and repairs" the sum of $931.76, but these expenditures were from general appropriations for "buildings at agencies and repairs", and were not from any sum appropriated for the specific purpose under article VI of the treaty of 1866.

## XII

The Secretary of the Interior made the following payments of Seminole moneys to the Seminole tribal treasurer, as shown by the report of the General Accounting Office:

| Year | Amount | Rep. G. A. O. pages |
|---|---|---|
| 1899 | $103,500.00 | 161, 197, 216. |
| 1900 | 103,788.60 | 162, 198, 216, 283. |
| 1901 | 103,433.75 | 162, 198, 216. |
| 1902 | 103,500.00 | 162, 198, 217. |
| 1903 | 103,507.71 | 163, 199, 217, 283. |
| 1904 | 103,500.00 | 163, 199, 217. |
| 1905 | 103,052.00 | 163, 199, 218. |
| 1906 | 103,500.00 | 164, 200, 218. |
| 1907 | 36,921.12 | 164, 200, 218. |
| Total | 864,702.58 | |

24

## XIII

The Secretary of the Interior disbursed the following amounts from the principal of the "Seminole School Fund":

| G. A. O. Rep., page | Fiscal year | Purpose of disbursement | Amount |
|---|---|---|---|
| 296 | 1920 | Per capita payments | $25,744.50 |
| 296 | 1921 | " " " | 6,701.06 |
| 296 | 1921 | Equalization of allotments | 490.22 |
| 297 | 1922 | Education | 17,743.43 |
| 297 | 1923 | " | 16,679.86 |
| 297 | 1924 | " | 247.94 |
| 298 | 1925 | " | 6,504.72 |
| 298 | 1926 | " | 12,809.52 |
| 298 | 1927 | " | 17,815.59 |
| 299 | 1928 | " | 19,685.35 |
| 299 | 1929 | " | 1.29 |
| 300 | 1930 | " | 30,031.82 |
| Total | | | 154,455.30 |

## XIV

During the period from July 1, 1912 (fiscal year 1913), to 1929, the following amounts were paid by the Secretary of the Interior from the tribal funds of the Seminole Nation for "Education", which

payments were not specifically appropriated by Congress from such funds:

| G. A. O. Rep., pages | Fiscal year | Amount | Totals |
|---|---|---|---|
| 284 | 1913 | $531.44 | |
| 284 | 1914 | 903.65 | |
| 285 | 1915 | 502.32 | |
| 285 | 1916 | 484.40 | |
| 285 | 1917 | 147.82 | |
| 286 | 1918 | 1,146.73 | |
| 286 | 1919 | 2,433.88 | |
| 286 | 1920 | 2,705.60 | |
| 287 | 1921 | 1,917.64 | |
| 287 | 1922 | 2,945.62 | |
| 287 | 1923 | 1,571.13 | |
| 288 | 1924 | 18,628.92 | |
| 288 | 1925 | 11,804.20 | |
| 288 | 1926 | 218.45 | |
| 289 | 1927 | 2,996.54 | |
| 289 | 1928 | 1,463.04 | $50,401.38 |
| "INTEREST ON SEMINOLE MONEYS ON DEPOSIT IN BANKS" | | | |
| 291 | 1919 | $267.20 | |
| 292 | 1923 | 791.50 | $1,058.70 |
| Total | | | 51,460.08 |

Congress by the acts of March 7, 1928 (45 Stat. 200, 216), and March 4, 1929 (45 Stat. 1562, 1577), respectively, limited disbursements from Seminole trust funds for education for the years 1929 and 1930 to a total of $33,000 for each year.

The Secretary of the Interior paid out of the said trust funds for education, in excess of the amount authorized, $1,952.25 for the year 1929, and $1,957.71 for the year 1930.

25

## XV

The Secretary of the Interior made the following payments from the Seminole trust funds without specific appropriations therefor:

| Fiscal year | Fund | Insurance | Construction and repair of buildings |
|---|---|---|---|
| 1913 | Interest on Seminole School Fund | | 761.14 |
| 1914 | " " " | | 1,089.09 |
| 1915 | " " " | 443.70 | 1,461.31 |
| 1916 | " " " | | 593.50 |
| Total | | 443.70 | 3,905.04 |

## XVI

Because of certain errors made by the defendant in keeping with books in respect to the plaintiff's funds, some of which were in favor of the plaintiff and some against it, there is a balance due the plaintiff in the sum of $1,350.35.

*Conclusion of law*

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover $1,317,087.27.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one million three hundred seventeen thousand eighty-seven dollars and twenty-seven cents ($1,317,087.27).

*Opinion*

WILLIAMS, Judge, delievered the opinion of the court:

The jurisdictional act under which suit is brought is set out in finding 1.

The jurisdiction of the court to hear and determine the issues presented in the amended petition, filed on September 19, 1934, is not questioned by the defendant. The claim is one of accounting, except as to one item, and in the main is similar to the claim presented in The Creek Nation v. United States, 78 C. Cls. 474.

The claim grows out of the provisions of treaties between the United States and the Seminole Nation of Indians of the dates of August 7, 1856 (11 Stat. 699), and March 21, 1866 (14 Stat. 755), and numerous acts of Congress which will be referred to in connection with the particular items of the claim to which they apply.

The report of the General Accounting Office contains a complete and admirably arranged statement of the relevant treaties and statutes, also a detailed recital of all appropriations made by Congress in fulfillment of the various treaty obligations, and an itemized account of disbursements made of such appropriations by the Secretary of the Interior. The special findings of fact are based on the figures shown in the report and, while not arranged in the exact order in which the various items of the claim are presented in the petition and the plaintiff's suggested findings of fact, present
26 a concise and easily comprehended statement of the material facts upon which the claim is based.

The plaintiff's claim in the aggregate amounts to $1,746,013.23, and consists of items falling generally within two classes:

1. Items as to which it is alleged that the United States failed to make payments in the amounts and in the manner provided by its treaties and agreements with the Seminole Nation.

2. Items as to which it is alleged payments were made by the Secretary of the Interior out of Seminole trust funds without authority of law.

These items will be considered in the order in which the facts upon which they are based are set forth in the special findings of fact.

Item 1 (finding IV), amount claimed $61,563.42. In the treaty of August 7, 1856, between the United States and the Creek and Seminole Tribes of Indians, the United States in respect to the Sem-

inoles agreed to provide annually for a period of ten years: $3,000 for the support of schools, $2,000 for agricultural assistance, and $2,200 for the support of smiths and smith shops. This obligation entailed a total expenditure for the purposes named of $72,000 for the ten-year period. Congress annually appropriated the moneys due the Seminoles under this provision but only $10,436.58 of the amount appropriated was disbursed for the purposes named in the treaty. This the defendant concedes.

The defendant says that, notwithstanding the fact that the full amount due was not provided for the purposes named in the treaty, there is no balance due the plaintiff on that account for the reason that the defendant was authorized by the act of July 5, 1862 (12 Stat. 512, 528),[1] and the appropriation acts of March 3, 1863 (12 Stat. 793), June 25, 1864 (13 Stat. 180), and March 3, 1865 (13 Stat. 562), to divert these funds from the purposes for which they were appropriated and to disburse the same for the relief of loyal refugee Indians of the Seminole and other Indian tribes, and that this was done. It is also contended that this action was later ratified by article VIII of the treaty of 1866, which provided:

"The stipulations of this treaty are to be a full settlement of all claims of said Seminole nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, con-
27 sequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole nation by the United States. * * *"

The act of July 5, 1862, supra, was operative only "during the discretion and pleasure of the President." It is not shown that the President ever took any action under this statute either by declaring by proclamation the abrogation of "all treaties" with the Seminoles, or by directing that "appropriations heretofore or hereafter made" to carry into effect treaty stipulations with them "be suspended and postponed wholly or in part." Without action on the part of the President the act by its own terms was ineffective.

---

1 "* * * That all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part, at and during the discretion and pleasure of the President: Provided, further, That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary, for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the Government. And an account shall be kept of the sums so paid for the benefit of such tribe, which account shall be rendered to Congress at the commencement of the next session thereof. And all purchases of articles for the purposes above set forth, shall be made on advertisement, as provided in other cases, and an account shall be rendered of all such purchases, with a statement of the prices paid therefor: And provided further, That in cases where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized, by proclamation, to declare all treaties with such tribe to be abrogated by such tribe, if, in his opinion, the same can be done consistently with good faith and legal and national obligations."

The release stipulated in article VIII of the treaty of 1866, insofar as it relates to the diversion of Seminole funds by the Secretary of the Interior during the War of the Rebellion, covers only the diversion of annuity payments. As to these funds the Seminole Nation ratified and confirmed "all such diversions of annuities heretofore made from the funds of the Seminole Nation by the United States." The United States had diverted the sum of $249,731.88 of Seminole moneys during the period of the Civil War—from the fiscal years 1862 to 1866—an amount largely in excess of the amount of annuity funds diverted. Had the release been intended to ratify and confirm the diversion of other than the annuity payments, we think such intention would have been expressly stated. The general language, "The stipulations of this treaty are to be a full settlement of all claims of said Seminole Nation for damages and losses of every kind growing out of the late Rebellion", has no application and cannot be held to include this item of the Seminole claim for the reason that substantially the whole amount claimed was due and unpaid before the outbreak of the war and consequently is not one for "damages and losses growing out of the War of the Rebellion." The simple facts are that the United States covenanted with the Seminole Tribe in article VIII of the treaty of 1856, as a part of the consideration for the treaty, to provide annually for them for a period of ten years fixed sums for the support of schools, for agricultural assistance, and for the support of smiths and smith shops among them. In the absence of subsequent specific enactment by Congress to the contrary, the United States was obligated to disburse the funds stipulated in the manner and for the purposes designated in the treaty. The United States failed to discharge this treaty obligation in full, having disbursed only a part of the amount for the purposes named in the treaty. The plaintiff tribe is entitled to recover the undisbursed balance of $61,563.42.

Item 2 (finding V), amount claimed, $150,000. The United States agreed in article VIII of the treaty of 1856 to invest for the Seminole Nation the sum of $250,000, at five percent per annum, and to invest the further sum of $250,000 in like manner whenever the Seminoles then remaining in Florida had emigrated and joined their brethren in the west, whereupon the two sums so invested were to constitute a fund belonging to the united tribe of Seminoles, the interest on which "at the rate aforesaid, shall be annually paid over to them per capita as an annuity."

28 There is no controversy as to the payment of the annuity thus provided prior to the fiscal year 1861. But beginning with that year, and up to and including the fiscal year 1866, no part of the $25,000 annually due, amounting to $150,000, was disbursed per capita to members of the tribe, although the amount due was annually appropriated by Congress for that purpose, the whole of such appropriations, together with other Seminole funds, being dis-

bursed for the relief of loyal refugee members of the Seminole and other tribes of Indians.

The plaintiff, we think, is clearly precluded from recovery as to this item of its claim by reason of the stipulations in article VIII of the treaty of 1866, heretofore set out. In comprehensive and unqualified terms the Seminole Nation ratified and confirmed "all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, consequent upon the late war with the so-called Confederate States." The diversions complained of had all been made when this provision was incorporated in the treaty of 1866, and the ratification and confirmation by the Seminoles of "all such diversions of annuities heretofore made" bar the plaintiff tribe from now asserting claim for the annuity payments so ratified and confirmed by it.

Item 3 (finding VI), amount claimed $154,551.28. This item is also based on the agreement of the United States in article VIII of the treaty of 1856 to pay annually to the Seminole Nation, per capita as an annuity, the $25,000 interest due on the united Seminole fund of $500,000.

The amount due under this provision of the treaty was annually appropriated by Congress for the fiscal years 1867 to 1909, inclusive. The Secretary of the Interior, however, failed to disburse certain of the amounts so appropriated, as shown in finding VI, by either making per capita payments to members of the tribe or paying the same over to the Seminole tribal treasurer, amounting in all to $154,551.28. The plaintiff concedes that payment of these funds into the Seminole tribal treasury during the fiscal years 1875 to and including the fiscal year 1898 was authorized by the act of April 15, 1874 (18 Stat. 29). Claim is made in another item, subsequently to be considered, for the payments made into the tribal treasury subsequent to the fiscal year 1898. Recovery, therefore, under this item is sought only of the amount of the underpayments for the years named, either by direct per capita payments to members of the tribe or by payment into the tribal treasury.

The defendant says that even if the funds in question were not disbursed in strict accordance with the terms of the treaty, they were expended for the benefit of the plaintiff tribe, and that no damage resulted to the tribe from the "diversion" of the funds, even if unauthorized. It is urged that if the United States be technically liable, the tribe having received the benefit of the expenditures, there arises in favor of the United States an equitable counterclaim for the same amount, which the court under section 3 of the jurisdictional act is authorized to pass upon. This contention was urged under like circumstances in The Creek Nation v. United States, supra, and was rejected by the court. Section 3 of the
29 jurisdictional act authorizes the court to "hear, examine, consider, and adjudicate any claims which the United States may

have against said Indian Nation." "Claims" as used in the section, of course, can mean only legal claims which the United States asserts by way of counterclaim. The United States has asserted no counterclaim, hence there is no claim against the plaintiff tribe which the court is authorized to "hear, examine, consider, and adjudicate." Even if the plaintiff received the benefit of the payments, and that fact is not established, they were payments made outside of the provisions of the treaty and as such were gratuities which the court under the jurisdictional act is without authority to offset against the plaintiff's claim.

The treaty stipulations as to the manner and the purposes for which the annuity payments be expended were as much a part of the treaty and as binding on the United States as was the provision fixing the amount to be paid. Furthermore, section 2097 of the Revised Statutes (act of July 26, 1866, 14 Stat. 280) prohibited disbursement in any other manner:

"No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law."

The United States failed to disburse the full amount of the annuity payments due the plaintiff for the years in question in the manner and for the purposes named in the treaty, although the full amounts due were appropriated by Congress for that purpose. It is no defense to say, even if the fact was shown, that they were paid out for other purposes for which the tribe received the benefit.

The plaintiff is therefore entitled to recover the amount of the underpayments set forth in finding VI, $154,551.28.

Item 4 (finding VII), amount claimed, $1,790. The United States agreed in article IX of the treaty of 1856 to expend the sum of $20,000 for improvements for the Seminoles then in Florida after they had removed to the Seminole country west. Congress appropriated the $20,000 provided for in this article of the treaty but only $18,210 of the appropriation was expended for the purposes specified. The plaintiff is entitled to recover the undisbursed balance, $1,790.00.

Item 5 (finding IX), amount claimed, $90,597.20. Article III of the treaty of 1866, among other things, provided that of the balance due the Seminole Nation under the treaty, the sum of $50,000 "shall be a permanent school fund, the interest of which [five percent per annum] shall be paid annually and appropriated to the support of schools." Congress annually, beginning with the fiscal year 1867 to and including the fiscal year 1909, appropriated the $2,500 interest due under this provision of the treaty. For the fiscal years 1867 to 1874, inclusive, there was disbursed for school purposes from the sums so appropriated the sum of $16,902.80 only, although the amount due for that period and duly appropriated by Congress was

$20,000. Beginning with the fiscal year 1875 down to and including the fiscal year 1907, the annual amount due and appropriated was paid by the Secretary of the Interior to the Seminole tribal treasurer, except that for the fiscal year 1907 only $1,750 was so paid.

The plaintiff in another item makes claim for the payments made by the Secretary of the Interior to the Seminole tribal treasurer subsequent to the fiscal year 1898. These years will therefore be eliminated in the consideration of this item, leaving only for determination the plaintiff's right to recover the amount of the underpayments for the years 1867 to 1874, inclusive, the amounts paid to the Seminole tribal treasurer for the years 1875 to 1898, inclusive, and the underpayment to the tribal treasurer for the year 1907.

Payments made by the Secretary of the Interior to the Seminole tribal treasurer of the annual interest due the plaintiff for school purposes under the treaty of 1866 were unauthorized. While the Creek Nation under the terms of the treaty of 1856 had been vested with the power to disburse certain of their tribal funds by tribal officials, and the payment of such funds was authorized to be made to the tribal treasurer for that purpose, no such provision was made in respect to the Seminole Nation in that or any subsequent treaty.

The Secretary of the Interior in a supplemental report to the Attorney General, on March 22, 1935, said in respect to these payments:

"There has nothing been found in the records to show why these amounts were turned over to the Treasurer, but inasmuch as a part of the annuities was for the support of the Seminole government, and the Act of 1874 provided for a five thousand dollar appropriation for the school fund, the entire annuity under the 1856 treaty was so used. The treaty of 1866 provided for a government for the Seminole Nation and the annuities were all used for the support of such government and for the schools which were established in their country and conducted for their benefit."

The act of April 15, 1874, to which the Secretary refers in his report, conferred authority on the Commissioner of Indian Affairs, with the sanction of the Secretary of the Interior and the President of the United States, to expend annuities, interest, or other moneys then or thereafter due to the Seminole Tribe of Indians under article VIII of the treaty of 1856 "for such objects as will best promote the comfort, civilization, and improvement of the Seminole Indians" or "to pay such annuities or any part thereof into the treasury of the Seminole Nation to be used as the council of the same shall provide, instead of paying the same per capita according to the terms of said treaty." The act further provided that the consent of the tribe "to such expenditures and payment shall be first obtained" and the agreement shall provide "that the sum of five thousand dollars shall be annually appropriated out of said annuity to the school fund of said tribe." Since this act by its terms applied solely to "annuities,

interest, or other moneys" then or thereafter to become due under article VIII of the treaty of 1856, it is clear that it did not and could not authorize the like disposition of interest due the plaintiff under the treaty of 1866. Congress at the time of the enactment knew that the interest in question was annually due the plaintiff under the terms of the treaty of 1866, and that appropriations for the same were being regularly made. Neither the act of 1874 nor any subsequent act of Congress conferred authority on the Secre-
31 tary of the Interior to disburse moneys due the plaintiff tribe under the treaty of 1866 in any manner other than that provided in the treaty.

The treaty provided that the interest on the permanent school fund of $50,000 be "paid annually and appropriated to the support of schools." Congress never authorized disbursements of this fund to be otherwise made. It follows that the plaintiff is entitled to recover the amount of the unauthorized payments to the tribal treasurer during the years 1875 to 1898, inclusive, $57,500, also the amount of the underpayments for the years 1867 to 1874, inclusive, $3,097.20, and the underpayment of $750.00 for the fiscal year 1907, amounting in all to $61,347.20.

Item 6 (finding X), amount claimed, $15,000. This claim is for $15,000, which the third article of the treaty of 1866 provided to be paid for the erection of a mill "suitable to the needs" of the Seminole Nation. The $15,000 was appropriated by Congress and turned over to an Indian agent. He purchased a combined saw and grist mill and had it erected at the Seminole Agency. The evidence submitted does not justify a finding that the mill was not suitable to the needs of the Seminole Nation and that its erection did not discharge the defendant's treaty obligations in that respect. The plaintiff, therefore, is not entitled to recover on this claim.

Item 7 (finding XI), amount claimed, $10,000. The United States agreed in article VI of the treaty of 1866 to cause to be constructed, at an expense not exceeding $10,000, suitable agency buildings, in consideration of which the Seminole Nation relinquished and ceded to the United States one section of their lands, upon which the agency buildings should be erected. Congress in 1866 appropriated the sum of $10,000 for agency buildings provided in the treaty. None of this amount, however, was used for that purpose, and the whole of the appropriation was subsequently returned to surplus. In 1872 Congress again appropriated the sum of $10,000 to replace the amount of the previous appropriation. In July 1875 the sum of $969.85 of this appropriation was returned to surplus. It is not shown for what purposes the $9,030.15 expended out of this appropriation was used, but it appears that none of it was used for the purpose of erecting agency buildings.

In the years 1870 and 1872 there was expended for "agency buildings and repairs" the sum of $931.76 out of a general appropriation for "buildings at agencies and repairs." While these expenditures

were not made out of the specific funds provided for in the treaty but from other funds of the tribe, we think the defendant is entitled to have this sum credited against its treaty obligations to erect suitable agency buildings, as the amount may reasonably be considered as having been expended for the purposes designated in the treaty. The plaintiff is entitled to recover the balance not so disbursed, $9,068.24.

Up to this point the items considered are based on the alleged failure of the United States to make payments of the sums due the plaintiff under its treaties with the United States, in the amounts and in the manner provided by such treaties. The defendant in the brief concedes that the amounts claimed were not disbursed for the purposes named in the treaties under which the claims arose, except as to the claim of $15,000 for the erection of a mill.

32 In determining the plaintiff's right to recover as to these items, we have applied the rule that an Indian tribe is entitled to have the full amount due it under the terms of a treaty with the United States disbursed in the manner and for the precise purposes named in the treaty, unless Congress by subsequent legislation provides that payments be otherwise made, and that the United States is liable to the tribe for the balance of any moneys not so disbursed and expended.

We now come to the consideration of the items of the claim where it is alleged disbursements of Seminole trust funds were made by the Secretary of the Interior without authority of law. In the consideration of these items the rule stated in The Creek Nation v. United States, supra, will be applied:

"That Congress has plenary power over the administration of Indian affairs is well settled. Cherokee Nation v. Georgia, 5 Pet. 1; Cherokee Nation v. Hitchcock, 187 U. S. 294; Lone Wolf v. Hitchcock, 187 U. S. 553. The Secretary of the Interior has only such authority over the funds of Indian tribes as is confided in him by Congress. He cannot legally disburse and pay out Indian funds for purposes other than those authorized by law. This rule is the test by which the legal right of the Secretary of the Interior to make the disbursements involved must be determined."

Item 8 (finding XII), amount claimed, $864,702.58. Recovery is sought under this item of payments made by the Secretary of the Interior out of the Seminole tribal funds to the Seminole tribal treasurer subsequent to the passage of the Curtis Act, June 28, 1898, aggregating the sum of $864,702.58.

Prior to the passage of the Curtis Act, the Seminole Nation and other Indians constituting the Five Civilized Tribes largely controlled their own affairs independent of the Federal Government, maintaining governments of their own, electing their principal chief and council and other tribal officers. These governments maintained courts, police, and schools, collected taxes, and under various treaty provisions and acts of Congress were entrusted with the disburse-

ment of certain of the tribal income due them from the United States, payments of which were authorized to be made to the respective tribal treasurers. As we have seen, the act of April 15, 1874, authorized payment of certain moneys due the Seminole Nation under article VIII of the treaty of 1856 into the Seminole tribal treasury to be used as "the council of the same shall provide, instead of paying the same per capita according to the terms of the said treaty." Also the act of March 2, 1889 (25 Stat. 980, 1004), authorized payment into the Seminole tribal treasury semiannually five per cent interest on the sum of $1,500,000 remaining in the Treasury of the United States to the credit of the tribe as part of the consideration paid for the release and conveyance of certain of their lands. Under these two acts large sums due the Seminoles from the United States were paid to the Seminole tribal treasurer and disbursed by its tribal authorities according to the laws of the tribe. The same situation prevailed as to other tribes of the Five Civilized Nations.

Long before the passage of the Curtis Act, the utter inefficiency of the Indian tribal governments had been demonstrated and was universally recognized. It was also a matter of common
33 knowledge throughout the Indian country that they were notoriously and incurably corrupt, and that every branch of the service was infested with favoritism, graft, and crookedness of every kind. The Dawes Commission, in one of its early reports to Congress (1894), in speaking of these tribal governments and the prevailing conditions existing under them, said:

"Corruption of the grossest kind, openly and unblushingly practiced, has found its way into every branch of the service of the tribal governments. All branches of the governments are reeking with it, and so common has it become that no attempt at concealment is thought necessary. The governments have fallen into the hands of a few able and energetic Indian citizens, nearly all mixed blood and adopted whites, who have so administered their affairs and have enacted such laws that they are enabled to appropriate to their own exclusive use almost the entire property of the Territory of any kind that can be rendered profitable and available.

* * * * * * *

"The large payments of moneys to the Indians of these tribes within the last few years have been attended by many and apparently well-authenticated complaints of fraud, and those making such payments, with others associated with them in the business, have, by unfair means and improper use of the advantages thus afforded them, acquired large fortunes, and in many instances private persons entitled to payments have received but little benefit therefrom. And worse still is the fact that the places of payments were thronged with evil characters of every possible caste, by whom the people were swindled, defrauded, robbed, and grossly debauched and demoralized. And in case of further payments of money to them the Government

should make such disbursements to the people directly, through one of its own officers.

* * * * * * *

"Justice has been utterly perverted in the hands of those who have thus laid hold of the forms of its administration in this Territory and who have inflicted irreparable wrongs and outrages upon a helpless people for their own gain."

The Curtis Act and succeeding acts of Congress had for their purpose the creation of correct membership rolls of the Five Civilized Tribes, the allotment of their tribal lands in severalty, the sale of the surplus remaining lands after allotments had been made, the equalization of allotments, the per capita distribution of the remaining tribal funds, the final winding up of tribal affairs and the ultimate dissolution of the tribal governments. As a part of this comprehensive general program it was provided by section 19 of the Curtis Act:

"That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation."

34 The undoubted purpose of this provision was to forever put an end to the intolerable conditions brought about by permitting the tribal governments to receive and disburse tribal moneys due them from the United States. It was to prevent unscrupulous tribal officers and corrupt designing persons associated with them from diverting to their own use and profit tribal funds, the common property of the tribe, and to insure that all members of the tribe would receive an equal share in the distribution of such funds. No more wholesome or humane provision was ever written into an Indian statute, and the Seminole Indians were entitled to its protection in the distribution of all tribal income due them from the United States. This protection, however, was not afforded them, and a continuation of the "irreparable wrongs and outrages upon a helpless people" was made possible by payment thereafter of large sums of their tribal funds to the tribal treasurer.

The defendant says that section 19 of the Curtis Act was not applicable to the Seminole Nation for the reason that the agreement negotiated November 16, 1897, between the United States and the Seminole Nation approved and ratified on July 1, 1898 (30 Stat. 567), "superseded and repealed any and all provisions of the Curtis Act inconsistent therewith" and that the said agreement "did not in anywise affect the provisions of the then existing treaties between the Seminole Nation and the United States, except insofar as such pro-

visions might be inconsistent therewith." This contention assumes, necessarily, we think, that the right of the Seminole Nation to have moneys due it from the United States paid into the Seminole tribal treasury was secured to the tribe by then existing treaty provisions. This is not the case. No such provision is found in any treaty between the United States and the Seminole Nation. The right of the Secretary of the Interior to pay Seminole tribal funds into the tribal treasury, as well as the right of the tribal authorities to receive and disburse such funds was purely statutory, created by the acts of April 15, 1874, and March 2, 1889, heretofore referred to. These acts were repealed by section 19 of the Curtis Act and were nonexistent when the Seminole agreement was ratified on July 1, 1898. There is nothing in the agreement inconsistent with the provisions of section 19 of the Curtis Act, and the contention that the effect of the agreement was to repeal or supersede the provisions of this section is without merit.

Immediately following the passage of the Curtis Act, Hon. Willis Van Devanter, then Assistant Attorney General, now an Associate Justice of the Supreme Court, advised the Secretary of the Interior in a written opinion that section 19 of the Curtis Act applied to the Seminole Nation. The Assistant Attorney General, after reviewing various sections of the Curtis Act, and the act of July 1, 1898, said:

"I have therefore to advise that section 19 of the act of June 28, 1898, applies to the Seminole Nation of Indians. Moreover, it results from what has been hereinbefore said that whether that act applies or not, the manner of disbursement under the Seminole act must be the same."

While this opinion was not controlling as to the action of the Secretary of the Interior, and was shortly thereafter withdrawn by the Assistant Attorney General for that reason, it was a correct decision of the legal question presented—a decision by an outstanding authority on the interpretation of Indian treaties and laws.

The Secretary of the Interior was therefore without legal authority to pay Seminole tribal funds into the Seminole tribal treasury. More than that he was plainly prohibited by the law from doing so. The payments being clearly illegal, the plaintiff is entitled to recover the amount shown by finding XII, which is the sum of $864,702.58.

Item 9 (finding XIII), amount claimed, $154,455.30. It was provided in the original Seminole agreement, ratified by act of Congress of July 1, 1898 (30 Stat. 567), that:

"Five hundred thousand dollars ($500,000) of the funds belonging to the Seminoles, now held by the United States, shall be set apart as a permanent school fund for the education of children of the members of said tribe, and shall be held by the United States at five percent interest, or invested so as to produce such amount of interest, which shall be, after extinguishment of tribal government,

applied by the Secretary of the Interior to the support of Mekasuky and Emahaka Academies and the district schools of the Seminole people; and there shall be selected and excepted from allotment three hundred and twenty acres of land for each of said academies and eighty acres each for eight district schools in the Seminole country."

Pursuant to the foregoing provision, the sum of $500,000 was transferred from the "Seminole General Fund" and set up on the books of the United States Treasury to the credit of the Seminole Nation under the heading "Seminole School Fund." The fund under the provisions of the agreement was to be a "permanent school fund" for the education of children of members of the Seminole tribe, the Secretary of the Interior being authorized to apply only the interest thereon for that purpose. He could not under the terms of the agreement expend any part of the principal fund for education or for any other purpose.

During the fiscal years 1920 to and including 1930, the Secretary disbursed out of the principal of this fund for the purposes of per capita payments, equalization of allotments and education the sum of $154,455.30. That Congress had the power to change the terms of the agreement and authorize these payments, is well established, but we find no act of Congress that either in express terms or by necessary implication authorizes any of them. It must, therefore, be held that they were illegally made and that the Seminole "permanent school fund"—a trust fund—was unlawfully depleted thereby. The plaintiff is entitled to recover the sum claimed, $154,455.30.

Item 10 (finding XIV), amount claimed, $51,460.08. The Secretary of the Interior, during the fiscal years 1913 to 1928, inclusive, expended for "education" out of the tribal funds of plaintiff the sum of $51,460.08, no part of which was specifically appropriated by Congress.

Section 18 of the Indian Appropriation Act for the fiscal year beginning July 1, 1912 (37 Stat. 518), contained the following provision:

"SEC. 18. Provided, That during the fiscal year ending June thirtieth, nineteen hundred and thirteen, no moneys shall be expended from the tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress, except as follows: Equal-
36 ization of allotments, per capita and other payments authorized by law to individual members of the respective tribes, tribal and other Indian schools for the current fiscal year under existing law, salaries, and contingent expenses of governors, chiefs, assistant chiefs, secretaries, interpreters and mining trustees of the tribes for the current fiscal year, and attorneys for said tribes employed under contract approved by the President, under existing law, for the current fiscal year: * * *"

This provision was continued in each annual appropriation act until the act of May 24, 1922 (42 Stat. 575), which act contained the tially the same provision.

"'* * * Provided further, That the Secretary of the Interior is hereby authorized to continue during the ensuing fiscal year the tribal and other schools among the * * * and Seminole tribes from the tribal funds of those nations, within his discretion and under such rules and regulations as he may prescribe: Provided, further, That hereafter no money shall be expended from tribal funds belonging to the Five Civilized Tribes without specific appropriation by Congress: Provided further, That for the current fiscal year money may be so expended from such tribal funds for * * * tribal and other Indian schools under existing law, * * *."

Each annual Indian appropriation act thereafter during the period covered by this item of the plaintiff's claim contained substantially the same provision.

In The Creek Nation v. United States, supra, it was held that all payments made by the Secretary of the Interior out of the Creek tribal funds, subsequent to July 1, 1912, without specific appropriations by Congress were illegally made except such payments as fell within the exceptions enumerated in these several acts. It was also held that "disbursements for education come within the exceptions to the proviso contained in the act of August 24, 1912, and similar provisions of succeeding acts." It is not shown that any of the payments complained of were in excess of the amount authorized to be expended for the purposes of education for the years in which they were made. We think the payments were authorized by law and that the plaintiff is not entitled to recover in respect to any of them.

Item 11 (finding XIV), amount claimed, $3,909.96. Congress in the Indian appropriation acts for the fiscal years 1929 and 1930, limited disbursements for Seminole funds for "education" to a total of $33,000 for each of the years. Notwithstanding this limitation, the Secretary of the Interior disbursed for "education" the sum of $34,952.25 for the fiscal year 1929, and the sum of $34,957.71 for the fiscal year 1930. These excessive disbursements were made in violation of plain provisions of law and were unauthorized and illegal. The plaintiff is therefore entitled to recover the sum of $3,909.96, the amount of the illegal disbursement of its funds for the two years.

Item 12 (finding XV), amount claimed, $4,348.74. The Secretary of the Interior expended out of the Seminole funds during the fiscal years 1913, 1914, 1915, and 1916 the sum of $4,348.74 for insurance and the construction and repair of buildings, without specific appropriation therefor by Congress. These payments were not only made without authority of law, but were made in violation of
37 law prohibiting them. Creek Nation v. United States, supra. The plaintiff is therefore entitled to recover the sum claimed, $4,348.74.

Item 13 (finding XVI), amount claimed, $178,533.42. The plaintiff in the petition alleges that certain amounts are due because of errors made by the defendant in keeping the books of account of plaintiff's funds, the amounts claimed not being stated. In its suggested findings of fact the plaintiff enumerates the alleged errors,

the specific amounts claimed, and the pages on which the entries appear in the report of the General Accounting Office. The aggregate amount claimed in the suggested findings is $178,533.42.

Careful consideration of the various book entries set forth in the suggested finding does not warrant the conclusion that they are errors in bookkeeping. In fact it appears that as to most of the items the entries were correctly made and set forth the actual disposition of the funds involved. It may be that many of the items reflect unauthorized disbursements of the plaintiff's funds, and if so they constitute distinct claims upon which recovery could be had if established by proof. But the court is not able to find from the bare record that the entries were erroneously made on the defendant's books. However, the defendant concedes, that certain of the entries, both in respect to the credits and debits, were erroneously made, resulting in a loss to the plaintiff of the sum of $1,350.55, which amount the plaintiff is entitled to recover.

Upon the whole case it is held that the plaintiff is entitled to recover the sum of $1,317,087.27 and a judgment for that amount is hereby awarded.

It is so ordered.

WHALEY, Judge; LITTLETON, Judge; GREEN, Judge; and BOOTH, Chief Justice, concur.

38 IX. *Judgment*

At a Court of Claims held in the City of Washington on the 2nd day of December, A. D. 1935, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides as a conclusion of law that the plaintiff is entitled to recover.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of one million three hundred seventeen thousand eighty-seven dollars and twenty-seven cents ($1,317,087.27).

X. *Further substitution of attorney of record*

On motion made by Paul M. Niebell, Esq., on January 8, 1936, and allowed by the court January 21, 1936, and consented to by Mr. John B. Campbell, the present attorney, Paul M. Niebell, Esq., was substituted as attorney of record.

XI. *Proceedings after entry of judgment*

On January 18, 1936, the defendant filed a motion for extension of time (15 days) within which to file a motion for a new trial, or for permission to file motion for new trial in typewritten form.

On January 21, 1936, the court allowed 15 days to file printed motion for new trial.

On February 6, 1936, the defendant filed a printed motion for new trial.

On March 2, 1936, the court entered the following order on said motion:

It is ordered this 2nd day of March, A. D. 1936, that the defendant's motion for new trial be and the same is hereby overruled.

39 On May 13, 1936, the defendant filed a motion for leave to file a second motion for new trial, which is as follows:

MOTION FOR LEAVE TO FILE SECOND MOTION FOR NEW TRIAL

Comes now the defendant, by its Assistant Attorney General, and pursuant to R. S. Sec. 1088, Judicial Code, Sec. 175, U. S. C., Title 28, Sec. 282, respectfully prays leave to file the attached motion for new trial in this case.

HARRY W. BLAIR,
*Assistant Attorney General.*

Said motion was allowed by the Court May 18, 1936.

On May 18, 1936, the defendant filed a second motion for new trial, and same was ordered to the June Law Calendar for argument.

XI. *Argument and submission of second motion for new trial*

On June 1, 1936, the defendant's second motion for new trial was argued and submitted by Mr. Charles E. Wyzanski, Jr., for defendant, and by Mr. Paul M. Niebell.

XII. *Order overruling defendant's second motion for new trial*

It is ordered this 8th day of June 1936, that the defendant's second motion for new trial be and the same is hereby overruled.

40 XIII. *Motion for designation of record for petition for writ of certiorari*

Filed June 23, 1936

Comes now the defendant, by its Assistant Attorney General, and moves that the court direct the clerk of the court to include in the transcript of the record of this case, heretofore applied for, to be used in connection with defendant's petition for a writ of certiorari, copies of the following documents and papers:

(a) The original petition herein; and

(b) Pages 161, 162, 163, 164, 197, 198, 199, 200, 216, 217, 218, and 283, of the report of the General Accounting Office filed herein. (Photostat copies of same supplied.)

Defendant shows that the original petition filed herein is an essential part of the record in view of the fact that the amended petition was filed subsequent to the time permitted by the jurisdictional act approved May 20, 1924 (43 Stats. 133) as modified by joint resolution

of May 19, 1926 (44 Stats. 568), for filing claims pursuant
41 thereto, and that the jurisdiction of the court is therefore limited to claims which were asserted in the original petition.

Defendant further shows that pages 161, 162, 163, 164, 197, 198, 199, 200, 216, 217, 218, and 283, have by reference in Finding XII of the court been made a part of said finding and the same are therefore material in the consideration of the matters referred to in said finding.

Respectfully submitted.

(Signed) HARRY W. BLAIR,
*Assistant Attorney General.*

IV. *Order allowing motion for designation of record*

It is ordered this 27th day of June 1936, that the defendant's motion for designation of record for petition for writ of certiorari, filed June 23, 1936, be and the same is hereby allowed.

42 XV. *Documents and papers referred to in motion of June 23, 1936, and included in this record*

DISBURSEMENT SCHEDULE NO. 42 (Continued)

| Treaty of August 7, 1856, 11 Stat. 699 | Fiscal year | | |
|---|---|---|---|
| | 1897 | 1898 | 1899 |
| Article 8: | | | |
| Cash payments to Seminole Treasurer | $25,000.00 | $25,000.00 | $25,000.00 |
| Total | $25,000.00 | $25,000.00 | $25,000.00 |

(Continued on next page)

43 DISBURSEMENT SCHEDULE NO. 42 (Continued)

| Treaty of August 7, 1856, 11 Stat. 699 | Fiscal year | | |
|---|---|---|---|
| | 1900 | 1901 | 1902 |
| Article 8: | | | |
| Cash payments to Seminole Treasurer | $25,000.00 | $25,000.00 | $25,000.00 |
| Total | $25,000.00 | $25,000.00 | $25,000.00 |

(Continued on next page)

44 DISBURSEMENT SCHEDULE NO. 42 (Continued)

| Treaty of August 7, 1856, 11 Stat. 699 | Fiscal year | | |
|---|---|---|---|
| | 1903 | 1904 | 1905 |
| Article 8: | | | |
| Cash payments to Seminole Treasurer | $25,000.00 | $25,000.00 | $25,000.00 |
| Total | 25,000.00 | 25,000.00 | 25,000.00 |

(Continued on next page.)

45 DISBURSEMENT SCHEDULE NO. 42 (Continued)

| Treaty of August 7, 1856, 11 Stat. 699 | Fiscal year | | Total |
|---|---|---|---|
| | 1906 | 1907 | |
| Article 8: | | | |
| Payment for improvements, and expenses of removal and establishment | | | $90,000.00 |
| Per-capita payments | | | 242,438.45 |
| Support of blacksmiths | | | 5,158.58 |
| Agricultural aid | | | 2,278.00 |
| Expenses of delegations | | | 500.00 |
| Payment of drafts on Seminole Nation | | | 11,101.64 |
| Cash payments to Seminole Treasurer | $25,000.00 | $12,500.00 | 715,228.91 |
| Education | | | 3,000.00 |
| Cash payments to individuals | | | 17,821.00 |
| Article 9: | | | |
| Removal and subsistence of Indians | | | 73,510.65 |
| Blankets | | | 1,439.25 |
| Powder and lead | | | 229.00 |
| Shoes | | | 247.20 |
| Tobacco | | | 173.60 |
| Strouding | | | 6.25 |
| Rifles | | | 807.70 |
| Agricultural implements and equipment | | | 1,475.63 |
| Axes | | | 634.00 |
| Plows | | | 618.75 |
| Seeds | | | 271.62 |
| Payment for improvements | | | 18,210.00 |
| Carried forward | 25,000.00 | 12,500.00 | 1,235,150.23 |

46 DISBURSEMENT SCHEDULE NO. 46 (Continued)

| Treaty of March 21, 1866, 14 Stat. 755 | Fiscal year | | |
|---|---|---|---|
| | 1897 | 1898 | 1899 |
| Article 3: | | | |
| Cash payments to Seminole Treasurer | $3,500.00 | $3,500.00 | $3,500.00 |
| Total | 3,500.00 | 3,500.00 | 3,500.00 |

(Continued on next page)

47 DISBURSEMENT SCHEDULE NO. 46 (Continued)

| Treaty of March 21, 1866, 14 Stat. 755 | Fiscal year | | |
|---|---|---|---|
| | 1900 | 1901 | 1902 |
| Article 3: | | | |
| Cash payments to Seminole Treasurer | $3,500.00 | $3,500.00 | $3,500.00 |
| Articles 3 and 4: | | | |
| Cash payments to loyal Seminoles for losses incurred during Civil War | | 186,000.00 | |
| Total | $3,500.00 | 189,500.00 | 3,500.00 |

(Continued on next page)

48 DISBURSEMENT SCHEDULE NO. 46 (Continued)

| Treaty of March 21, 1866, 14 Stat. 755 | Fiscal year | | |
|---|---|---|---|
| | 1903 | 1904 | 1905 |
| Article 3: | | | |
| Cash payments to Seminole Treasurer | $3,500.00 | $3,500.00 | $3,500.00 |
| Total | $3,500.00 | $3,500.00 | $3,500.00 |

(Continued on next page)

49 DISBURSEMENT SCHEDULE NO. 46 (Continued)

| Treaty of March 21, 1866, 14 Stat. 755 | Fiscal year | | Total |
|---|---|---|---|
| | 1906 | 1907 | |
| Article 3: | | | |
| Support of Seminole Government | | | $6,373.97 |
| Expense of improving lands | | | 30,000.00 |
| Provisions | | | 40,362.00 |
| Work and stock animals | | | 15,000.00 |
| Agricultural implements and equipment | | | 5,000.00 |
| Cash payments to Seminole Treasurer | $3,500.00 | $1,750.00 | 116,001.15 |
| Education | | | 16,902.80 |
| Purchase, repairs, and removal of sawmill and gristmill | | | 15,000.00 |
| Payment of drafts on Seminole Nation | | | 500.00 |
| Articles 3 and 4: | | | |
| Expenses of investigating losses | | | 3,036.19 |
| Cash payments to loyal Seminoles for losses incurred during Civil War | | | 241,591.28 |
| Article 7: | | | |
| Expenses of taking census | | | 1,719.68 |
| Cash payments to Seminole Treasurer | | | 761.08 |
| Miscellaneous items: | | | |
| Provisions | | | 31,083.79 |
| Expenses of transporting seed wheat | | | 475.20 |
| Carried forward | $3,500.00 | $1,750.00 | $523,807.14 |

50 DISBURSEMENT SCHEDULE NO. 49 (Continued)

| Act of March 2, 1889, 25 Stat. 1004 | Fiscal year | | |
|---|---|---|---|
| | 1899 | 1900 | 1901 |
| Cash payments to Seminole Treasurer | $75,000.00 | $75,000.00 | $74,933.75 |
| Depredations | | | 66.25 |
| Total | $75,000.00 | $75,000.00 | $75,000.00 |

(Continued on next page)

51 DISBURSEMENT SCHEDULE NO. 49 (Continued)

| Act of March 2, 1889, 25 Stat. 1004 | Fiscal year | | |
|---|---|---|---|
| | 1902 | 1903 | 1904 |
| Cash payments to Seminole Treasurer | $75,000.00 | $75,000.00 | $75,000.00 |
| Total | $75,000.00 | $75,000.00 | $75,000.00 |

(Continued on next page)

52 DISBURSEMENT SCHEDULE NO. 49 (Continued)

| Act of March 2, 1889, 25 Stat. 1004 | Fiscal year | | |
|---|---|---|---|
| | 1905 | 1906 | 1907 |
| Cash payments to Seminole Treasurer | $74,552.09 | $75,000.00 | $22,671.12 |
| Depredations | 448.00 | | 2,542.00 |
| Total | $75,000.00 | $75,000.00 | $25,213.12 |

(Continued on next page)

53 DISBURSEMENT SCHEDULE NO. 52

Disbursements made by the United States for the benefit of the Seminole Nation of Indians from:

*"Indian Moneys, Proceeds of Labor (Seminoles)"* [1]

| Agreement of December 16, 1897, ratified by the act of July 1, 1898, 30 Stat. 567; and the act of April 26, 1906, 34 Stat. 137 | Fiscal year | | |
|---|---|---|---|
| | 1900 | 1903 | 1911 |
| Cash payments to Seminole Treasurer | $288.00 | $7.71 | |
| Pay of miscellaneous employees | | | $20.44 |
| Expenses of advertising, appraisal, and sale of unallotted land | | | 11.77 |
| Education | | | 856.67 |
| Total | $288.00 | $7.71 | $888.88 |

(Continued on next page)

[1] For amounts credited to this fund, see pages 336 to 339.

54 [Clerk's Certificate to foregoing transcript omitted in printing.]

(Endorsement on cover:) File No. 40,712. Court of Claims. Term No. 172. The United States, petitioner, *vs.* The Seminole Nation. Petition for a writ of certiorari and exhibit thereto. Filed July 8, 1936. Term No. 172 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

Supreme Court of the United States

*Order allowing certiorari*

Filed October 12, 1936

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○